

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

New West Petroleum, LLC
1831 16th Street,
Sacramento, CA 95814

Respondent.

Docket Number 03-05-940627

STATEMENT TO RESPONDENT

Enforcement Order

TO THE ABOVE RESPONDENT:

An Enforcement Order (Order) is attached to this statement and is hereby served upon you. The Order has been filed by the Department of Toxic Substances Control (Department).

UNLESS A WRITTEN REQUEST FOR A HEARING SIGNED BY YOU OR ON YOUR BEHALF IS DELIVERED TO THE DEPARTMENT OR POSTMARKED WITHIN TWENTY DAYS AFTER THE DATE OF THE COVER LETTER YOU RECEIVED WITH YOUR COPY OF THE ORDER, YOU WILL BE DEEMED TO HAVE WAIVED YOUR RIGHT TO A HEARING IN THIS MATTER. IF YOU DO NOT FILE A TIMELY HEARING REQUEST, THE ENFORCEMENT ORDER BECOMES FINAL AUTOMATICALLY.

The request for a hearing may be made by delivering or mailing one copy of the enclosed form entitled "Notice of Defense" or by delivering or mailing a Notice of Defense as provided in section 11506 of the Government Code to:

Chief Counsel
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor,
P. O. Box 806
Sacramento, California 95812-0806

The enclosed Notice of Defense, if signed and filed with the Department, is deemed a specific denial of all parts of the Order, but you will not be permitted to raise any objection to the form of the Order unless you file a further Notice of Defense as provided in section 11506 of the Government Code within fifteen days after service of the Order upon you.

If you file a Notice of Defense within the time permitted, a hearing on the allegations made in the Order will be conducted by the Office of Administrative Hearings of the Department of General Services in accordance with the procedures specified in Health and Safety Code section 25187 and Government Code sections 11507 et seq.

The hearing may be postponed for good cause. If you have good cause, you must notify the Department within ten working days after you discover the good cause. Failure to notify the Department within ten days will deprive you of a postponement.

Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are attached. If you desire the names and addresses of witnesses or an opportunity to inspect and copy items in possession, custody, or control of the Department,
you may contact:

Chief Counsel

Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd Floor
P. O. Box 806
Sacramento, California 95812-0806

Whether or not you have a hearing, you may confer informally with the Department to discuss the alleged facts, determinations, corrective actions and penalty. An informal conference does not, however, postpone the twenty-day period you have to request a hearing on the Order. An informal conference may be pursued simultaneously with the hearing process.

You may but are not required to be represented by counsel at any or all stages of these proceedings.

GOVERNMENT CODE

Section 11507.5. Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

Section 11507.6. Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic,

mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

Section 11507.7. Motion to compel discovery

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be

served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

New West Petroleum, LLC
1831 16th Street,
Sacramento, CA 95814

Respondent.

Docket Number 03-05-940627

ENFORCEMENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

1.1. Parties. The State Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to New West Petroleum, LLC. (Respondent).

1.2. Site. Respondent generates hazardous waste at the following sites: (Site).

- New West Petroleum/ Exxon Station 1043, 911 East Vista Way, Vista, CA 92084
- New West Petroleum/ Exxon Station 1017, 695 El Cajon Boulevard, El Cajon, CA 92020
- New West Petroleum, 3551, Avenida Encinas, Carlsbad, CA 93008
- New West Petroleum, 5145, Avenida Encinas, Ste. A Carlsbad, CA 92008

Respondent generates hazardous waste at numerous sites. 1.3. Generator. The Respondent generates the following hazardous waste: automotive fluids, and water contaminated with gasoline.

1.4. Jurisdiction. Section 25187 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the

New West Petroleum, LLC

Enforcement Order
Docket Number 03-05-940627

Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

DETERMINATION OF VIOLATIONS

2. The Department has determined that:

2.1. The Respondent violated Health and Safety Code section 25163(a)(1) in that on at least 75 occasions between April, 2001, and November, 2002, Respondent transferred custody of hazardous waste to a transporter who did not hold a valid registration from the Department. Exhibit 1 is a list of hazardous waste manifests for wastes generated by the Respondent, that were transported by Jenal Engineering Corp. (Jenal) to a facility operated by Jenal. At the times listed above, Jenal did not have a registration issued by the Department.

2.2. The Respondent violated Health and Safety Code, section 25160(b)(1) and California Code of Regulations, title 22, sections 66262.20(a) in that on at least 75 occasions between April, 2001, and November, 2002, Respondent shipped hazardous waste and failed to complete hazardous waste manifests for each of those shipments prior to shipment. Exhibit 1 is a list of hazardous waste manifests for wastes generated by the Respondent, that were transported by Jenal. Jenal completed the hazardous waste manifests for Respondent when the wastes were shipped from a facility operated by Jenal.

SCHEDULE FOR COMPLIANCE

3. Based on the foregoing Determination of Violations, IT IS HEREBY ORDERED THAT:

3.1.1. Immediately upon receipt of this Order, and for all times thereafter, Respondent shall transfer custody of hazardous waste only to transporters that hold a valid registration issued by the Department in compliance with Health and Safety Code section 25163 (a) (1).

3.1.2. Immediately upon receipt of this Order, and for all times thereafter, Respondent shall only transfer hazardous waste to a transporter with a valid hazardous waste manifest in conformance with Health and Safety Code section 25160 (b) (1) and Respondent shall retain two copies of the hazardous waste manifest when shipping hazardous waste, and shall submit one of those copies to the Department as required by California Code of Regulations, title 22, section 66262.40(a).

3.2. Submittals. All submittals from a Respondent pursuant to this Order shall be sent simultaneously to:

Phillip Blum
Task Force Support and Special Investigations Branch
Department of Toxic Substances Control
1011 N. Grandview Ave.
Glendale, CA 91201

3.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

3.4. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.5 Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.6 Site Access: Access to the sites shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

3.7. Data and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way

pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order.

3.8 Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.9 Extension Request: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.10 Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

4.1. Additional Enforcement Actions: By issuance of this Order, the Department does not waive the right to take further enforcement actions.

4.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

4.3. Parties Bound: This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

4.4. Time Periods. "Days" for purposes of this Order means calendar days.

PENALTY

5. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondent's penalty at \$21,000. Payment is due within 30 days from the effective date of the Order. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number, as shown in the heading of this case. Respondent shall deliver the penalty payment to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Phillip Blum, Unit Chief
Task Force Support and Special Investigations Branch
Department of Toxic Substances Control
1011 N. Grandview Ave.
Glendale CA 91201

RIGHT TO A HEARING

6. Respondent may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondent.

EFFECTIVE DATE

7. This Order is final and effective twenty days from the date of mailing, which is the date of the cover letter transmitting the Order to Respondent, unless Respondent requests a hearing within the twenty-day period.

Date of Issuance: January 19, 2006

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Phillip Blum, P.E.
Unit Chief, Southern California Unit
Task Force Support and Special
Investigations Branch
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201